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No.

Supreme Court, U. S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1971

LEROY N. BONKOWSKI,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To The Honorable, Chief Justice and Associate Justices Of The Supreme Court of The United States:

Your petitioner, Leroy N. Bonkowski, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit.

JUDGMENT AND OPINION OF THE COURTS BELOW

On April 4, 1972, the United States Court of Appeals for the Seventh Circuit, affirmed a judgment of the United States Tax Court (T.C. Memo Dec. 1970-340) which had established deficiencies in the petitioner's income tax as follows:

Year	Amount
1964	$ 308.15
1965	824.41
1966	943.17
Total	$2,075.73

The case is recorded as No. 71-1279; —— F.2d ——; 29 AFTR 2d, 72-845. Both cases are hereto appended as Appendix "A" and Appendix "B".

JURISDICTIONAL STATEMENT

The jurisdiction of this court is invoked under Title 28 of the United States Code, Section 1254(1).

QUESTION PRESENTED FOR REVIEW

I.

Whether the lower courts properly concluded that the petitioner was not the owner of the rental property located at 1501 N. Bosworth Avenue, in Chicago, Illinois, and, therefore, not the person entitled to report the income and expense of such property. (Questions which flow from the answer to this question are whether the mother of petitioner qualifies as a dependent and whether petitioner is entitled to a "head of household" status).

STATUTES & REGULATIONS INVOLVED

Internal Revenue Code — 1954:

Sec. 212. EXPENSES FOR PRODUCTION OF INCOME.

"In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection or refund of any tax."

Sec. 151. ALLOWANCE OF DEDUCTIONS FOR PERSONAL EXEMPTIONS.

"(e) Additional Exemption for Dependents.—

(1) In general.—An exemption of $600 for each dependent (as defined in section 152)—

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $600, or . . . . .

Sec. 152. DEPENDENT DEFINED.

"(a) General Definition.—For purposes of this sub-title, the term 'dependent' means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(4) The father or mother of the taxpayer, or an ancestor of either, ... "

Sec. 2. DEFINITIONS AND SPECIAL RULES

"(b) Definition of Head of Household:—

(1) In general.—For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in section 2(b)), and either—

(A) maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of—

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or . . . . . ."

Illinois Revised Statutes — 1967

Chapter 30—Conveyances

Sec. 9. "Quit claim deed—Form—Effect.)

Quitclaim deeds may be, in substance, in the following form:

The grantor (here insert grantor's name or names and place of residence), for the consideration of (here insert consideration), convey and quit claim to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of ....., in the state of Illinois.

Dated this ..... day of ....., A.D. 19 ....

A.B.

Every deed in substance in the form described in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quit claim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor, in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention. As amended by act approved July 11, 1951. L.1951, p. 1297."

STATEMENT OF THE CASE

Petitioner, during the calendar years 1964, 1965 and 1966, resided at 1501 N. Bosworth Avenue, in Chicago, Illinois, with his mother, Josephine, and with his two brothers, Byron and Jerome. He filed his income tax returns for the above three years with the District Director of Internal Revenue at Chicago, Illinois.

He reported the income and expenses relating to the rental property in which he lived. The respondent, in his statutory notices of deficiency, denied petitioner the right to include such income and expense on his returns, arguing that he was not the owner of the property.

Additionally, petitioner claimed his mother, Josephine Bonkowski, as a dependent for the years 1964 and 1965. The respondent denied this dependency credit on the premise that the gross income from the property was hers and therefore she did not qualify as a dependent, under the provisions of the Internal Revenue Code. In the Tax Court below, petitioner argued that should he be denied the right to claim his mother as a dependent for the year 1965, then, alternatively, he be entitled to use head of

household rates in computing his income tax for the year 1965.

On all three points the lower courts held for respondent.

Petitioner argues that the property in question was conveyed to him on January 1, 1964, and that under the applicable provisions of the Internal Revenue Code he was the proper person to report its income and expense. He further argues that since his mother was not entitled to the income property, that she properly came within the ambit of the dependency provisions of the Internal Revenue Code.

On January 1, 1964, Josephine signed the following conveyance:

Affidavit

> I, Josephine Bonkowski, hereby quit-claim unto my son, Leroy N. Bonkowski, all my interest in the real estate commonly known as 1501 N. Bosworth, Chicago, Illinois. My son shall hold this property subject to my occupying the premises for the rest of my natural life. After my death, said property is to be shared equally with my other son, Byron Bonkowski.

This document was never recorded. Nevertheless, beginning January 1, 1964, down to the present time, the petitioner has reported the income and the expenses of the property in question.

When the propriety of such reporting was questioned by the Internal Revenue Service, she executed a quit-claim deed to petitioner in July of 1967 and this latter deed was recorded.

REASONS FOR GRANTING THE WRIT

THE PETITIONER, FOR THE YEARS IN QUESTION, ARGUES THAT HE WAS THE OWNER OF THE PROPERTY LOCATED AT 1501 N. BOSWORTH AVENUE, CHICAGO, ILLINOIS, AFTER JANUARY 1, 1964, AND UNDER THE APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE WAS REQUIRED TO REPORT ITS INCOME AND EXPENSE.

The lower courts have concluded that the efforts of the petitioner's mother to convey title to the Bosworth Avenue property were ineffectual on January 1, 1964. Judge Irwin, in the United States Tax Court decision, laid particular emphasis upon the fact that Josephine Bonkowski had secured a mortgage on the real estate subsequent to that date.

He did, however, acknowledge that in July of 1967 she effectively transferred the subject property to the petitioner by executing a quit-claim deed, which was recorded. It is respectfully urged this court that the lower courts were in error in arriving at the conclusion that Mrs. Bonkowski had not transferred the questioned property on January 1, 1964.

On that day, Herman Feldman, an attorney practicing in the City of Chicago, prepared a conveyance which, for want of a better name, was called an "Affidavit". The precise language of the conveyance is:

> "I, Josephine Bonkowski, hereby quit-claim unto my son, Leroy N. Bonkowski, all my interest in the real estate commonly known as 1501 N. Bosworth, Chicago,

Illinois. My son shall hold this property subject to my occupying the premises for the rest of my natural life. After my death, said property is to be shared equally with my other son, Byron Bonkowski.

(Signed) Josephine Bonkowski"

According to the form prescribed in Chapter 30 of the Illinois Revised Statutes, the above language is adequate and sufficient for the purpose of transferring title. (See Statutes and Regulations Involved, *supra*).

The subject matter of the second sentence of the "Affidavit" must be construed to be a recital of the partial consideration flowing from the grantee to the grantor for the transfer of the title.

Interpreting the provisions of the Illinois Statutes, reference is made to Volume 13 of "Illinois Law and Practice", Section 36, where the following language may be found:

> "No particular form of words of grant is necessary in a deed, but it must appear from the language employed that it was the intention to convey title, and the language must purport to have that effect . . ." Citing Shadden v. Zimmerly (1948), 401 Ill. 118; Johnson v. Filson, (1886), 118 Ill. 219, 8 N.E. 318; Brady v. Spurck, (1861), 27 Ill. 318; Doe Ex Dem McConnell v. Reed, (1842), 5 Ill. 117.

Reference is also made in the same work, and in the same Section, to the Smith Hurd Statutes, Chapter 30, Section 9, where the following is cited:

> " 'Convey and quit-claim' generally are sufficient to convey title." Citing Midwest Radiant Corp. v. Hentze, (1949) 171 F.2d 635.

Webster's "New International Dictionary of the English Language", published by Merriam & Company in 1925,

defines the word "quit-claim" as "An instrument by which some right, title, interest, or claim, which one person has, or is supposed to have, in or to an estate held by himself or another, is released or relinquished to another, the grantor generally covenanting against persons who claim under himself, but not otherwise."

This follows closely the definition set forth in Words and Phrases, Volume 35-A, page 618, which reads:

> " 'Quit-claim' means in law to release a claim to by deed without covenants of warranty against adverse and paramount titles."

The above was followed in the case of *Bannard* v. *Duncan,* 79 Nebraska 189; 112 N.W. 353. In the latter case, the court stated, "It would appear that remise, release and quit-claim are interchangeable and that the words of the instrument are sufficient to constitute a conveyance."

In the case of *Midwest Radiant Corp.* v. *Hentze,* 171 F.2d 635, the Circuit Court of Appeals for the Seventh Judicial Circuit reversed the district court and defined the law of the State of Illinois, relative to transfers, by saying, "To be sure the general rule under the Illinois Statute is that the words 'convey and quit-claim' are sufficient to convey title, but where an instrument even in statutory form contains no words of inheritance, it must be construed as a whole, *Talman* v. *Eastern Illinois and P.R.R. Co.,* 379 Ill. 441 . . . ' and since the object of construction of deeds is to ascertain the intention which the maker of an instrument has expressed, a deed will, if possible, be construed so as to give effect to the intention of the parties as gathered from a consideration of the whole instrument. *Walker* v. *Illinois Central Railroad Co.,* 215 Ill. 610, 618; *Baer* v. *Milliken Trust Co.,* 336 Ill. 126, 132; *Texas Coal* v. *O'Meara,*

377 Ill. 144; *Talman* v. *Eastern Illinois and P.R.R. Co., supra.*"

The court further says, "In ascertaining the intention courts are not confined to a strict construction of the language used. The courts should look to the circumstances attending the transaction, the situation of the parties, the state of the thing granted and the object to be obtained, *Goodwillie Coal Co.* v. *Commonwealth Edison Co.*, 241 Ill. 42, 72; 89 N.E. 272; *Adams* v. *Gordon*, 265 Ill. 87, 91; *Law* v. *Kane*, 384 Ill. 591; and if necessary put itself in the place of the parties, read the instruments in the light of the circumstances surrounding them at the time it was executed and give consideration to the practical construction which the parties themselves placed upon the instruments, *Storey* v. *Storey*, 125 Ill. 608, 613; *Wright* v. *Loring*, 351 Ill. 584, 589; *Henry* v. *Metz*, 382 Ill. 297, 300-303; and *Law* v. *Kane*, *supra*, 384 Ill. 591; and an unreasonable construction which would work a result different from that intended, should not be adopted, *McCoy* v. *Farney*, 182 Ill. 60, 65; 55 N.E. 61."

In *Belusko* v. *Phillips Petroleum Co.*, 308 F.2d, 853 (1962), the same court follows its decision in the *Midwest Radiant* case (*supra*). It affirmed the language of the District Court, "A court in construing a written instrument, must give consideration to the instrument as a whole."

The same court had previously held in the *Mercantile Realty & Investment Co.* v. *S.S. Kresge Co.*, 184 F.2d, 582, 584, that, "An unreasonable construction which would work a result different than intended should not be adopted."

It must be concluded that the Illinois law, as previously found by the Seventh Circuit Court of Appeals, provides that there may be a conveyance of title to real estate by the use of the term "quit-claim". Apart from the language of the conveyance of January 1, 1964, it was cer-

tainly the intention of Josephine Bonkowski to divest herself of the title.

The evidence is clear that she intended to reimburse Leroy for the large amounts of money which he had expended in maintaining the property, and to invest him with its complete ownership (Tr. 54; App. 12).

This was the same interpretation which Herman Feldman, the preparer of the 1964 return, testified to on page 92 of the transcript, when he stated, "I put him down as the sole owner, that he was the sole owner of this building and he reported all the income from the building." Mr. Feldman further testified that the only reason that Byron was included in the conveyance was that his mother, the grantor, was concerned about Byron and that it was her intention to have the petitioner take care of him. (Tr. 92; App. 17).

The lower courts have made much of the fact that the petitioner's mother signed and executed a first mortgage in 1965. In view of the fact that the "Affidavit" had not been recorded, it would necessarily follow that she would be the one required to sign the mortgage papers.

The recognition of and assumption of the obligation was certainly not intended to be hers, and to confirm this theory, Leroy, in his income tax returns for 1965 and 1966, not only deducted monies paid by him as expenses incident to the procurement of the mortgage, but also reported the interest payments which he made thereon. (Stip. Jt. Exs. 2-b and 3-c).

It should also be remembered that this mortgage was one, the proceeds of which were to be used to pay off an old mortgage placed upon the property when Josephine Bonkowski was the sole owner.

Accordingly, it should be concluded that it was the intendment of Josephine Bonkowski on January 1, 1964, to effectively transfer title of her property. Judge Irwin's contrary conclusion, based upon the 1965 mortgage, completely disregards the actions of Josephine Bonkowski subsequent to January 1, 1964, when she no longer took an interest in the fiscal affairs of the building, did not report its income and expense and left the entire management, as well as the fiscal affairs of same, to the grantee, Leroy Bonkowski. All things considered, there is no room for doubt that as between Josephine and Leroy, there was a divestiture of the property resulting in Leroy's acquisition of same and making it incumbent upon him to report its income and expense from January 1, 1964, through December 31, 1967. From the above presentation, it must follow that Josephine Bonkowski had every intention of divesting herself of her proprietary interest in the Bosworth Avenue property.

It is respectfully urged this court that due consideration be given the fact that Leroy be considered the owner of the property as of January 1, 1964. Nothing speaks more stridently of her intentions than the final and conclusive disposition of the property in 1967.

CONCLUSION

It is respectfully submitted that there is here presented a novel question which should be resolved. The importance of the issue lies inherent in the interpretation of local real estate law and its applicability to the provisions of the Internal Revenue Code. As far as has been ascertainable, the matter has never before been conclusively resolved, and it is respectfully urged that this court make such resolution now.

Respectfully submitted,

MAX A. REINSTEIN
Attorney for Petitioner

APPENDIX

APPENDIX

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM 1971—JANUARY SESSION 1972

No. 71-1279

LEROY N. BONKOWSKI,

Petitioner-Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the United States Tax Court

APRIL 4, 1972

Before CASTLE, *Senior Circuit Judge,* KILEY, *Circuit Judge,* and GRANT, *District Judge.*[1]

CASTLE, *Senior Circuit Judge.* The petitioner-appellant, Leroy N. Bonkowski, prosecutes this appeal from a decision of the United States Tax Court which sustained assessments of federal income tax deficiencies against petitioner made by the Commissioner of Internal Revenue

[1] Chief District Judge Robert A. Grant of the Northern District of Indiana is sitting by designation.

for the calendar years 1964, 1965 and 1966 in the total amount of $2,075.73. The contested deficiencies resulted from the Commissioner's disallowance of expenses and rental losses claimed by petitioner on his tax returns as attributable to the operation of a rental property, denial of a dependency exemption for petitioner's mother for the years 1964 and 1965, and refusal to permit the petitioner to use head of household rates in the computation of his tax liability for the year 1965.

The determinative issue presented by this appeal is whether the Tax Court properly found and concluded that the petitioner was not the owner of the rental property located at 1501 N. Bosworth Avenue, Chicago, Illinois, during the tax years in question. If the petitioner was not the owner of the Bosworth property—a building containing a store and apartments—then he was not entitled to report the income and loss with respect thereto, and the gross income from such property was such that the owner, petitioner's mother,[2] could not be claimed by him as a dependent (Section 151(e)(1)(A) of the Internal Revenue Code), and the petitioner was not entitled to head of household status (Section 1(b)(2)(A) and (B)).

The record discloses that Josephine Bonkowski, the petitioner's mother, had become the sole owner of the Bosworth Avenue property on December 3, 1951, when the petitioner conveyed his 3/9th interest therein to her. Prior to that time Josephine Bonkowski had owned a 6/9th interest in the property. The petitioner, his mother, and petitioner's brother, Byron Bonkowski, lived together on the premises during all of the tax years 1964, 1965 and 1966.

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[2] Petitioner's claim to ownership of the property is based on an alleged conveyance from his mother.

On January 1, 1964, Josephine Bonkowski executed an instrument which is captioned "AFFIDAVIT" and reads as follows:

> I, Josephine Bonkowski, hereby quit-claim unto my son, Leroy Bonkowski, all my interest in the real estate commonly known as 1501 North Bosworth, Chicago, Illinois. My son shall hold this property subject to my occupying the premises for the rest of my natural life. After my death, said property is to be shared equally with my other son, Byron Bonkowski.
>
> (Signed) Josephine Bonkowski

The Tax Court held that this instrument was ineffective as a conveyance of the property under Illinois law, and that, accordingly, the petitioner was not entitled to report the income and expenses attributable thereto as his, to claim his mother as a dependent (the gross income from the property being in excess of $600 for each of the years involved), or to use the rate established for persons in a head of household status in computing his income tax for the years in question.[3] The court, therefore, sustained the deficiency assessments made by the Commissioner.

In arriving at its holding that the document signed by Josephine Bonkowski on January 1, 1964, was ineffective to transfer ownership to the petitioner the court recognized that a literal or strict compliance with the statutory form of deed is not essential to an instrument's effectiveness to transfer title if the intention of the parties as gathered from a consideration of the instrument as a whole, and in the light of the circumstances attending its execu-

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[3] During each of the years involved gross income in excess of $600 disqualified the petitioner's mother from being a "dependent" and also made petitioner ineligible for "head of household" status based on dependency of his mother.

tion, was to effect a transfer of ownership. Thus, omission of the word "convey" and failure to recite the consideration, both elements of the statutory form of quit-claim deed (Ill. Rev. Stat., ch. 30, §9), was not considered to be of controlling import. This was in accord with the Illinois holdings to the effect that no particular form of words of grant is necessary in a deed provided it expresses the intention to convey title. I.L.P. Conveyances, §36; *Shadden* v. *Zimmerlee,* 401 Ill. 118, 81 N.E. 2d 477. In *Shadden* the word "convey" was not used in an instrument designated as a quit-claim deed but the language employed and the attending circumstances established intent to transfer ownership, and the instrument was held sufficient to effect such transfer. But, on the basis of the circumstances attending the execution of the instrument here involved, including the testimony of both Josephine Bonkowski and of the attorney who prepared the document, the Tax Court found that its intended purpose was not to effect a transfer of ownership but rather was to attempt to give petitioner the opportunity to report the income and expenses as his, and to claim his mother as a dependent, for income tax purposes.

Apart from its failure to incorporate two of the formal elements of the statutory form of quit-claim deed, the document signed by Josephine Bonkowski was ambiguous on its face. Its attempted incorporation of a testamentary disposition of the property to both the petitioner and his brother, although not accompanied by the statutory prerequisites for execution of a valid Will, served to becloud the existence of an intent to presently transfer ownership to the petitioner. From the standpoint of the controlling Illinois authorities it is evident that the court applied correct legal criteria in reaching its ultimate conclusion. In keeping with the teachings of *Shadden* v.

Zimmerlee, supra, and the decisions cited and reviewed therein, the court proceeded to ascertain the true intent of the parties as gathered from the instrument as a whole and the circumstances of its execution.[4]

And, insofar as the court's ultimate conclusion rests on its factual findings with respect to the intent of the parties we perceive no basis for disturbing that conclusion. Those findings are amply supported by the record. They are based on substantial evidence. We cannot say that they are clearly erroneous. We are not convinced that a mistake has been made. Consequently, those findings must stand. *Commisssioner* v. *Duberstein,* 363 U.S. 278; *Carroll* v. *C.I.R.,* 7 Cir., 418 F. 2d 91; *Tripp* v. *C.I.R.,* 7 Cir., 337 F. 2d 432; *Allen* v. *C.I.R.,* 7 Cir., 283 F. 2d 785; *Wisconsin Memorial Park Company* v. *C.I.R.,* 7 Cir., 255 F. 2d 751. In this connection there was testimony that for a number of years the petitioner had expended time and money in the repair and improvement of the Bosworth Avenue property, his brothers had put no money into the building, there was insufficient income from the property to carry its expenses, and that petitioner's mother had no other source of income. Josephine Bonkowski testified that she felt the best thing she could do was to turn the property over to the petitioner. But she also testified that in 1964 she was unwilling, out of concern for her other two sons, to deed the property to the petitioner. Her testimony in this respect was corroborated by the testimony of the attorney who prepared the so-called "affidavit". He testified that he prepared the

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[4] Cf. *Midwest-Radiant Corporation* v. *Hentze,* 7 Cir., 171 F. 2d 635; *Law* v. *Kane,* 384 Ill. 591, 52 N.E. 2d 212; *Magnolia Petroleum Co.* v. *West,* 374 Ill. 516, 30 N.E. 2d 24; *D. M. Goodwillie Co.* v. *Commonwealth Electric Co.,* 241 Ill. 42, 89 N.E. 272.

document for Josephine Bonkowski's signature because she did not want to sign a deed. He had been retained to prepare the petitioner's income tax return and was of the view that it would be better for the petitioner to own the building since there was no income of Josephine Bonkowski to offset the loss from the operation of the building.

That the Tax Court pointed out that the "affidavit" was never recorded, that subsequent to its execution Josephine Bonkowski, as owner of record, executed a mortgage on the property, and that in 1967 she deeded the property to the petitioner, does not, as urged by petitioner, militate against the court's holding. These factors constituted evidence of the practical construction which the parties themselves placed upon the instrument in question. They were not relied upon as the basis for the court's decision but served only as collateral indicia of the actual intent of the parties.

In view of the conclusion we have reached with respect to the basic and determinative issue presented by this appeal it is unnecessary for us to consider the contentions advanced by the petitioner in support of the particular items of expense claimed and to substantiate the claimed depreciation on the building.

The decision of the Tax Court is affirmed.

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

UNITED STATES TAX COURT

LEROY N. BONKOWSKI, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket Nos. 5639-67 and 2257-68.

Filed December 16, 1970.

Petitioner claimed rental losses in connection with certain property allegedly owned by him during the years in question.

He also claimed dependency exemptions for his mother in each of the years 1964 and 1965, and he used head of household rates in computing his tax liability for 1965.

Held, petitioner is not entitled to report income and loss with respect to real property that he did not own.

Held, further, petitioner cannot claim his mother as a dependent in 1964 or 1965, since her gross income was $600 or more.

Held, further, petitioner cannot use head of household rates in computing his tax liability for 1965.

Max A. Reinstein, for the petitioner.

Nelson E. Shafer, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

IRWIN, *Judge*: The Commissioner determined deficiencies in petitioner's income tax for the calendar years 1964, 1965, and 1966 in the amounts of $308.15, $824.41, and $943.17, respectively.

The issues presented for our decision are:

(1) whether petitioner is entitled to deduct in each of the years in question rental losses with respect to certain real property located at 1501 N. Bosworth Avenue, Chicago, Ill. (hereinafter sometimes referred to as the Bosworth Avenue property);

(2) whether claimed real estate taxes, mortgage expenses, and interest with respect to the Bosworth Avenue property are deductible by petitioner;

(3) whether petitioner is entitled to a dependency exemption deduction for his mother for the years 1964 and 1965; and

(4) whether petitioner is entitled to use head of household rates in computing his tax liability for the year 1965.

In the event we decide that petitioner is entitled to claimed rental loss deductions, we must decide, in the alternative, whether he is entitled to deductions in excess of those which respondent is willing to recognize as allowable rental expenses for the Bosworth Avenue property.

FINDINGS OF FACT

Some of the facts have been stipulated. The stipulation of facts and the exhibits attached thereto are incorporated herein by this reference.

Leroy N. Bonkowski (hereinafter referred to as petitioner), who resided in Chicago as of the date of the filing of the petition herein, timely filed individual Federal income tax returns for the calendar years 1964, 1965, and 1966 with the district director of internal revenue, Chicago, Ill.

During the taxable years in question and as of the date of the trial herein, petitioner was employed as a draftsman by the Stewart Warner Corporation in Chicago.

The Bosworth Avenue property was owned by Wladyslaw Bonkowski (hereinafter Wladyslaw), petitioner's grandfather, until his death on March 18, 1941. Wladyslaw had devised the property in question, both the land and the building thereon, to Peter Bonkowski (hereinafter Peter), petitioner's father.

An appraisal report dated February 9, 1943, which was filed in the Probate Court of Cook County, Ill., indicated that the estimated age of the building was 35 years and concluded that the value of the Bosworth Avenue property was $11,750, the building having been valued at $11,000 with the remainder allocable to the land.

In 1949, Josephine Bonkowski (hereinafter Josephine), petitioner's mother, divorced Peter, and a stipulation was executed by them which provided for a settlement of their respective property rights. At the time the stipulation was entered into, Peter was serving as trustee of the Bosworth Avenue property under a trust deed dated June 4, 1942; Josephine owned five-ninths of the beneficial interest in the trust; Peter owned one-ninth thereof; and Jerome Bonkowski (hereinafter Jerome), a son of Josephine and Peter, owned the remaining three-ninths.

Pursuant to the terms of the stipulation, Peter resigned as trustee and assigned his one-ninth beneficial interest in the trust to Josephine who thereafter, on February 1, 1950, assumed the trusteeship of the Bosworth Avenue property. Although the stipulation also stated that Peter and Josephine agreed to quitclaim their interest in certain lots owned by them in Arlington Heights and Park Ridge, Ill.,

to their sons "Leroy and Byron as joint tenants, and Jerome,"[1] this provision of the stipulation was apparently never effectuated.

Jerome assigned his three-ninths beneficial interest in the trust containing the Bosworth Avenue property to petitioner on April 11, 1950. Thereafter, pursuant to a quit-claim deed dated December 3, 1951, and recorded January 7, 1952, petitioner transferred the aforementioned three-ninths interest to his mother, Josephine, who thereby owned the entire beneficial interest in the Bosworth Avenue property.

Petitioner had expended time, effort, and some money during the 1950's and early 1960's on the Bosworth Avenue property, although his mother, the owner of record of the property, had been reporting the rental income and expenses attributable thereto on her Federal tax returns for those years.

Herman Feldman, an attorney in Chicago, suggested to Josephine that she convey, by deed, ownership of the real property in question to petitioner so that he could obtain tax benefits from the rental losses incurred with respect thereto.

On January 1, 1964, Josephine signed the following statement:

AFFIDAVIT

I, JOSEPHINE BONKOWSKI, hereby quit-claim unto my son, LEROY N. BONKOWSKI, all my interest in the real estate commonly known as 1501 North Bosworth, Chicago, Illinois. My son shall hold this property subject to my occupying the premises for the

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[1] Peter and Josephine had three sons by their marriage: Leroy, Byron, and Jerome.

rest of my natural life. After my death, said property is to be shared equally with my other son, BYRON BONKOWSKI.

This "affidavit" was never recorded.

The intended purpose in drawing up such a document was to attempt to give petitioner the opportunity to report rental income and expenses from the property in question and also to claim his mother as a dependent, thereby substantially reducing his Federal income taxes.

After the "affidavit" was signed in 1964, petitioner continued to maintain the building as he had done before. Josephine intended that the property in question should ultimately be owned by petitioner in view of his history of maintaining the building for her. As to her other two sons, Jerome and Byron, Josephine believed that Leroy would provide for them should the need arise.

The "affidavit" was intended to provide for petitioner's management of the property. Josephine did not intend to transfer legal title to the Bosworth Avenue property in January 1964, and, therefore, she did not want to sign a deed thereto. The exact purpose of the last sentence of the "affidavit" is unclear, although it apparently was an attempt by Josephine to manifest her intention that petitioner take care of his brother Byron.

No other transfers of record were made with respect to the real property in question from January 7, 1952, until July 14, 1967, on which date Josephine executed a quitclaim deed conveying her entire interest in the Bosworth Avenue property to petitioner. This deed was recorded in the Recorder's Office of Cook County, Ill., on August 1, 1967.

During the period that Josephine was owner of record of the Bosworth Avenue property, she secured at least two mortgages thereon, each one for $5,000. The second mortgage was obtained by her in 1965.

The building in question is a three-story structure with two four-room apartments located on the basement level, a store and two four-room apartments located on street level, and one six-room and two four-room apartments located on each of the second and third floors.

Petitioner claimed the following net rental losses in connection with the Bosworth Avenue property on his Federal income tax returns:

1964	1965	1966
$828	$3,614	$5,064

The following table indicates the gross rental income and specific expenses reported by petitioner for the years at issue:

	1964	1965	1966
Gross Rental Income	$4,195.00	$2,945.00	$3,002.00
Less: Mortgage Expense	$ —	$ 84.00	$ —
Mortgage Interest	23.00	133.00	258.00
Real Estate Tax	782.00	767.00	768.86
Fuel and Utilities	1,480.00	1,538.00	1,848.71
Advertising	384.00	369.00	214.00
Water	65.00	57.00	73.24
Building Inspection	12.00	12.00	11.50
Legal Fees and Court Costs	500.00	400.00	—
Fire Insurance	—	62.00	61.67
Management Expense	50.00	—	50.00
Car (License and Operating Expenses)	—	56.00	105.54
Depreciation (Building)[2]	1,166.00	1,166.00	1,166.00
	$4,462.00	$4,644.00	$4,557.52
Deduct: Personal Use[3]	446.20	422.18	414.32
	$4,015.80	$4,221.82	$4,143.20
Depreciation (Other)	75.00	1,013.67	1,313.67
Repairs	1,032.00[4]	1,324.00	2,611.10
	5,122.80	6,559.49	8,067.97
Net Income or (Loss)	$(927.80)[5]	$(3,614.49)[5]	$(5,065.97)[5]

[2]The basis used for computing depreciation (excluding itemized improvements) was $35,000. The indicated useful life was 30 years commencing on the alleged date of acquisition of the property by petitioner, viz., January 1, 1964.

[3]Petitioner deducted one-tenth as personal use in 1964, whereas he deducted one-eleventh as personal use in 1965 and 1966, respectively.

[4]Petitioner reported $1,048 in his return but only deducted $1,032.

[5]Discrepancies exist between these figures and the rental losses claimed by petitioner in the amounts of $828, $3,614 and $5,064 for the years 1964, 1965, and 1966, respectively.

Josephine Bonkowski, who had reported the income and expenses from the real property in question prior to 1964, used a basis of $18,000 and a useful life of 33-1/3 years starting from the date of acquisition in computing the depreciation thereon.

In 1964, petitioner began to take depreciation deductions on the Bosworth Avenue property. At that time, he claimed a useful life of 30 years on the building. Since the building was constructed in approximately 1908, its useful life was claimed by petitioner to be over 85 years.

In connection with the aforementioned Arlington Heights and Park Ridge properties, petitioner alleged that he paid taxes thereon. The taxes were allegedly deducted as part of the Bosworth Avenue property expense. No documented evidence of the amounts and dates of such tax payments appear in the record, nor do we even know the addresses of these properties.

Litigation involving the Arlington Heights property was commenced in the early 1960's by a subdividing contractor who was demanding payment for work done on the unimproved property. In addition, petitioner was defending a suit by a plumbing contractor for work done on the Bosworth Avenue property. Petitioner deducted $500 in legal fees as a 1964 rental expense of the Bosworth Avenue property on his tax return for 1964. The exact amount of the total legal fees deducted that were allocable to the litigation involving the Bosworth Avenue property is unclear.

Petitioner was also involved in other litigation; there were some suits for eviction and a suit against a neighbor for damage to the Bosworth Avenue building. The dates of these lawsuits are unknown.

Petitioner deducted an additional $400 in legal fees as a 1965 rental expense on the Bosworth Avenue property.

Of this amount, $75 was expended for the preparation of petitioner's 1964 income tax return. However, the record does not reveal the specific purposes for which the balance of the fees was expended.

Petitioner purchased a 1953 Chevrolet in 1965 for $100 which he used almost exclusively in connection with maintenance of the Bosworth Avenue property. He depreciated the entire cost of this car on his 1965 income tax return.

In 1966, petitioner acquired a 1960 Dodge for $400, the whole cost of which he depreciated on his 1966 tax return. The Dodge was also used almost exclusively in connection with the maintenance of the Bosworth Avenue property.

In the event we hold herein that petitioner is entitled to report income or loss with respect to the Bosworth Avenue property, respondent contends that the amounts indicated in the following tables should still be disallowed for lack of substantiation:

ANALYSIS OF DEPRECIATION

	1964		1965		1966	
scription	Claimed	Not Allowable	Claimed	Not Allowable	Claimed	Not Allowable
uilding	$ 949.00	$949.00	$1,060.00	$1,060.00	$1,060.00	$1,060.00
as Heater	75.00	75.00	75.00	75.00	75.00	75.00
tore Front			416.67	416.67	416.67	416.67
Vasher & Dryer			122.00	122.00	122.00	122.00
athrooms			300.00	300.00	300.00	300.00
utomobile			100.00	100.00	400.00	400.00
	$1,024.00		$1,982.00[6]		$2,374.00[6]	

[6] Although the individual items claimed for 1965 and 1966 total $2,073.67 and 2,373.67, respectively, petitioner only deducted the total amounts indicated.

ANALYSIS OF REPAIRS (TENANTS' EXPENSES)

	1964		1965		1966	
Description	Claimed	Not Allowable	Claimed	Not Allowable	Claimed	Not Allow
Floor tile					$ 329.65	$ 329.6
Suspended ceiling					597.88	597.8
Hardware	$ 45.00	—0—	$ 78.00	—0—	219.16	—0—
Window sash—43 sets			137.00	—0—	398.80	—0—
Light fixtures—10					338.30	338.3
Electrical	242.00	$182.00	464.00	$ 330.00	40.48	—0—
Paint	86.00	—0—	73.00	—0—	61.10	—0—
Glass					18.49	—0—
Refrigerator—replacement	40.00	—0—			149.79	149.
Refrigerator—repair	48.00	—0—	30.00	—0—	57.85	—0—
Rugs					52.00	—0—
Furniture	320.00	182.00	150.00	150.00	244.06	—0—
Water heater parts					5.15	—0—
Rugs—cleaning	16.00	—0—			25.65	—0—
Misc. supplies	60.00	—0—	102.00	—0—	72.77	—0—
Storm window	6.00	—0—	55.00	—0—		
Lumber			200.00	200.00		
Plumbing	23.00	—0—	35.00	—0—		
Gas range	50.00	—0—				
Gas heater	11.00	—0—				
Misc. repair & replacements	101.00	—0—				
	$1,048.00		$1,324.00		$2,611.10[7]	

[7] Actual figures total $2,611.13.

ANALYSIS OF OTHER EXPENSES

	1964		1965		1966	
Description	Claimed	Not Allowable	Claimed	Not Allowable	Claimed	Not Allowable
Mortgage—expenses			$ 84.00	—0—		
Mortgage—Interest	$ 23.00	—0—	133.00	—0—	$ 258.00	—0—
Real estate taxes	782.00	$ 59.22	767.00	$ 22.90	768.86	$ 39.34
Fuel and utilities	1,480.00	—0—	1,476.00	—0—	1,786.59	—0—
Advertising	384.00	—0—	369.00	—0—	214.00	—0—
Telephone			62.00	—0—	62.12	—0—
Inspection	12.00	—0—	12.00	—0—	11.50	—0—
Water	65.00	—0—	57.00	—0—	73.24	—0—
Insurance			62.00	—0—	61.67	—0—
Management expense	50.00	—0—			50.00	—0—
Auto license			26.00	—0—	48.50	—0—
Auto—operating expense			30.00	—0—	57.04	—0—
Legal fees and construction costs	500.00	500.00	400.00	400.00		
	$3,296.00		$3,578.00[8]		$3,388.52[9]	
Less: Personal (1/10 or 1/11)	329.00		325.00		307.52	
	$2,967.00		$3,253.00		$3,081.00	

[8] Actual figures total $3,478.00.

[9] Actual figures total $3,391.52.

OPINION

Petitioner reported income and expenses incurred in connection with certain rental property during the years 1964, 1965, and 1966. Respondent disallowed the resulting net rental losses with respect thereto on the ground that petitioner did not own the property in question.

Petitioner also claimed his mother as a dependent for the years 1964 and 1965 and used head of household tax rates in computing his tax liability for 1965. Respondent disallowed the dependency exemptions and determined, therefore, that petitioner was not entitled to head of household status.

1. *Bosworth Avenue Property*

Respondent's position on this issue was concisely stated on brief:

> Petitioner did not own the Bosworth Avenue property during the years in question * * * and may not report the income or loss therefrom. * * *

Petitioner, on the other hand, contends that he is entitled to the rental loss deductions in question because he allegedly became owner of the Bosworth Avenue property on January 1, 1964, the date on which his mother signed an "affidavit" which petitioner alleges was an instrument legally sufficient to transfer title to him.

It is clear that petitioner's mother, by conveying the property to him, could have conferred tax benefits on him. However, the earnest desire to confer such benefits is not enough to effectuate such a "gift." One must pay a price therefor, viz., divest oneself of ownership and *effectively* transfer that ownership to the taxpayer wishing to utilize the tax benefits. Therefore, the underlying question to be resolved herein is whether the "affidavit" dated January

1, 1964, effectively conveyed ownership of the property in question to petitioner.

Respondent contends that it did not, and we must agree with him on this issue.

In Illinois, the words " 'convey and quit-claim' generally are sufficient to convey title. * * *" *Midwest-Radiant Corporation* v. *Hentze,* 171 F. 2d 635 (C.A. 7, 1948), certiorari denied 336 U.S. 952 (1949); Ill. Rev. Stat. ch. 30, sec. 9 (1967).

These words were not used in the "affidavit" signed by Josephine. However, the omission of such words is not fatal to the transfer of title. Where these words are not used, it must appear from the language used that it was the intention to convey title, and the language must have that effect. Moreover, we can examine factors such as the circumstances surrounding the transaction, the situation of the parties, and the goal sought in attempting to ascertain the intention of the maker of an instrument purporting to transfer ownership. *Law* v. *Kane,* 384 Ill. 591, 52 N.E. 2d 212 (1943); *Adams* v. *Gordon,* 265 Ill. 87, 106 N.E. 517 (1914); and *D. M. Goodwillie Co.* v. *Commonwealth Electric Co.,* 241 Ill. 42, 89 N.E. 272 (1909).

We must also consider the practical construction which the parties themselves place upon the instrument in question. *Law* v. *Kane, supra.*

From an examination of the entire record, we are convinced and hold that petitioner's mother, Josephine, did not want to transfer ownership of the Bosworth Avenue property to petitioner as of January 1, 1964. One fact which weighs heavily in this determination was that Josephine secured a mortgage on the property in 1965. We cannot fathom why she would do this unless she still con-

sidered herself the owner of the property. Furthermore, the transfers with respect to the Bosworth Avenue property made in the early 1950's were effectuated by properly executed deeds. We are also aware that Josephine was hesitant about conveying title to petitioner even though she knew that he was managing the rental property, because of her concern for the welfare of her other two sons. Josephine appears to have been placed on the horns of a dilemma, viz., she wanted petitioner to own the property, which appears to have been her only substantial asset, yet she wanted Jerome and Byron to be provided for as well.

Upon the advice of her attorney, Herman Feldman hereinafter Feldman) she executed the "affidavit." Feldman testified that he knew that the "affidavit" would not transfer title to petitioner, but he felt it was sufficient to enable petitioner to obtain tax benefits by reporting the rental losses on the property. The "affidavit" was in no sense intended to serve as a deed, which is evidenced by the fact that it was never recorded.

Josephine finally agreed and intended to divest herself of ownership of the Bosworth Avenue property in July 1967, at which time she executed a deed to her son, petitioner, which was properly recorded. However, this transfer came too late to affect the years before us.

Since petitioner did not own the property in question during the years at issue, we hold that he was not entitled to report income or loss with respect thereto.[10]

As to the real estate taxes and mortgage interest and expenses, these items are generally deductible by the per-

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[10] See *Preston Wilson*, T.C. Memo. 1961-135; *Solomon N. Seale*, a Memorandum Opinion of this Court dated Jan. 18, 1950.

son on whom the liability therefor is imposed. *Magruder* v. *Supplee*, 316 U.S. 394 (1942); *Caroline T. Kissel*, 15 B.T.A. 1270 (1929); *Edward C. Kohlsaat*, 40 B.T.A. 528 (1939); section 1.164-1(a), Income Tax Regs.

In Illinois, state and municipal property taxes become a personal obligation of the owner of the property. Ill. Ann. Stat. ch. 34, sec. 508(a) (Smith-Hurd 1970). *Pearsall* v. *Catholic Bishop of Chicago*, 311 Ill. 11, 1942 N.E. 520 (1924); *McCullough* v. *Ladies of Loretto*, 246 Ill. 403, 92 N.E. 908 (1910). Since petitioner's mother was the owner of the property, the real estate taxes were imposed upon her and deductible by her, not petitioner. *Edward C. Kohlsaat, supra.* Furthermore, we have no evidence which indicates that anyone other than Josephine was liable on the mortgages which she secured on the property in question. Therefore, petitioner was not entitled to deduct mortgage interest and expenses with respect thereto.

At trial and on brief, petitioner claimed that part of the real estate taxes he deducted in the years at issue were attributable to two lots located in Arlington Heights and Park Ridge. However, on his tax returns, these alleged items were deducted on the schedule for the Bosworth Avenue property. Petitioner could not recall the exact amount of the taxes paid nor did he produce any documented proof of such payment. Furthermore, we are not sure who owned these properties. In view of the vague and general testimony on this matter, we are constrained to hold that petitioner has not met his burden of proof with respect thereto, and accordingly, the deductions were properly disallowed.:

As to the disallowance of attorney's fees and court costs for the years 1964 and 1965, respondent has agreed that $75 of the claimed 1965 legal fees was for the preparation

of petitioner's 1964 income tax return. Therefore, that amount was deductible.[11] Section 212(3).

As to the remaining legal fees, the record is far from clear as to the exact amount of the fees and the purposes for which the fees were expended. We do not know the amount of the fees incurred with respect to the Bosworth Avenue property or the Arlington Heights property. Furthermore, we are not sure of the years in which the fees were paid. In view of the unsatisfactory state of the record, we are constrained to hold that the disallowance of $500 in legal fees in 1964 and $325 in legal fees in 1965 was proper. Moreover, since petitioner did not own the Bosworth Avenue property and since we do not know if he was the owner of the Arlington Heights property, he would not, in any event, be entitled to deduct legal fees incurred in connection therewith.

2. *Dependency Exemption Deduction*

Petitioner could not claim his mother as a dependent for the years 1964 and 1965, if her gross income in each of those years was $600 or more. Section 151(e)(1)(A). We hold that petitioner was not entitled to the dependency exemptions claimed since his mother's gross rental income from the Bosworth Avenue property alone was $4,195 and $2,945 in 1964 and 1965, respectively.

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[11] In his notice of deficiency for 1965 respondent disallowed a claimed rental loss of $3,614 on the Bosworth Avenue property. The $75 expended for the preparation of petitioner's 1964 income tax return is allowable as an itemized deduction. However, respondent allowed petitioner a standard deduction of $714.57 in lieu of itemized deductions totaling $440.

3. *Head of Household Rates*

Petitioner was not entitled to use head of household tax rates in computing his tax liability for 1965, because he did not maintain a household in that year which constituted the principal place of abode of a person for whom he was entitled to a deduction under section 151. Section 1(b)(2)(A) and (B).

In order to reflect the conclusions reached herein,

Decisions will be entered for the respondent.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-9

LEROY N. BONKOWSKI, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Tax Court (Pet. App. 7-23) is reported at P-H Memo T.C., par. 70,-340. The opinion of the United States Court of Appeals (Pet. App. 1-6) is reported at 458 F. 2d 709.

JURISDICTION

The judgment of the court of appeals was entered on April 4, 1972. The petition for a writ of

certiorari was filed on June 30, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

Whether the evidence is sufficient to support the finding that petitioner was not the owner of certain rental property during the taxable years in issue and, therefore, was not entitled to treat the expenses and income generated by this property as his own for various income tax purposes.

STATUTES INVOLVED

The pertinent portions of Sections 2, 151, 152 and 212 of the Internal Revenue Code of 1954, and of Section 9, Chapter 30, of the Illinois Revised Statutes are set forth in the petition. (Pet. 3-5.)

STATEMENT

Petitioner's mother owned the entire beneficial interest in the Bosworth property, rental property containing apartments and a store. (Pet. App. 2, 9-10, 12.) On January 1, 1964, she signed a document entitled "Affidavit", under which she purported to convey her interest in the Bosworth property to the petitioner. (Pet. 6; Pet. App. 3, 10-12.) The document was never recorded, however (Pet. App. 11), and petitioner's mother continued to treat the Bosworth property as her own. She obtained a mortgage on the property the following year. (Pet. App.

11.) On July 14, 1967, she executed a quitclaim deed conveying the Bosworth property to the petitioner, and this deed was recorded. (Pet. App. 11.)

Prior to 1964, petitioner's mother had treated the income and expenses generated by the Bosworth property as her own for tax purposes. (Pet. App. 14.) Beginning in that year, and in 1965 and 1966, petitioner deducted the expenses attributable to the property on his tax returns and claimed net rental losses in connection therewith. (Pet. App. 12-17.) He also claimed his mother as a dependent in 1964 and 1965. (Pet. App. 2, 7.) These actions were based on the theory that his mother had conveyed full ownership of the Bosworth property to him by executing the "affidavit." (Pet. App. 18.)

The Tax Court held that the "affidavit" was ineffective as a conveyance of property under Illinois law, and that, accordingly, petitioner was not entitled to report the income and expenses attributable thereto as his. (Pet. App. 18-22.) It also held that he could not claim his mother as a dependent or use head-of-household rates, since the Bosworth property belonged to his mother during these years. (Pet. App. 22-23.) The court of appeals affirmed the Tax Court's decision on the ground that it was supported by the record and that it was the result of a proper application of Illinois law. (Pet. App. 3-5.)

ARGUMENT

The judgment below is correct. There is no conflict or any other reason for further review.

It is well established that under the federal taxing scheme, where income from property is taxed to the owner thereof, state law is determinative of the question of ownership. *Poe* v. *Seaborn*, 282 U.S. 101, 109-110; *United States* v. *Mitchell*, 403 U.S. 190, 195. In the present case, the lower courts looked to Illinois law to determine whether petitioner rather than his mother owned the Bosworth property (and consequently the income and deductions generated by it) during the taxable years in issue. (Pet. App. 4, 19.) They found that although the instrument which was used purportedly to convey the property to petitioner in 1964 did not comply with the form of a quitclaim deed prescribed by Illinois statute (Smith-Hurd Ill. Ann. Stat., c. 30, Sec. 9 (Pet. 4-5)), Illinois courts accord greater regard to the actual intent of the parties. See, e.g., *Magnolia Petroleum Co.* v. *West*, 374 Ill. 516, 30 N.E. 2d 24; *Schreier* v. *Chicago & N.W. Ry. Co.*, 96 Ill. App. 2d 425, 239 N.E. 2d 281. Resolution of the question presented, therefore, turned on the purely factual question of intent, as gathered from the language of the instrument as a whole, the circumstances surrounding its execution, and the situation and goals of the parties. *Shadden* v. *Zimmerlee*, 401 Ill. 118, 81 N.E. 2d 477; *Law* v. *Kane*, 384 Ill. 591, 52 N.E. 2d 212.

The Tax Court's finding that it was not the intent of the parties to effect a transfer of ownership in the Bosworth property but rather to enable petitioner to report the income and expenses attributable thereto as his own, and to claim his mother as

a dependent for tax purposes, is amply supported by the record. There is testimony in the record, for example, that petitioner's mother, out of concern for her other two sons, was unwilling to transfer ownership of the property to petitioner in 1964. (Tr. 20, 85.)[1] There is also testimony by the attorney who prepared the 1964 "affidavit" to the effect that he was aware that it would be ineffective to transfer title under Illinois law. (Tr. 86.) Moreover, the facts that the "affidavit" was never recorded (Pet. App. 11), that petitioner's mother, as owner of record, executed a mortgage on the Bosworth property a year later (Pet. App. 11), and that in 1967 she executed a recorded deed transferring the property to petitioner (Pet. App. 11), were properly considered by the Tax Court in arriving at its conclusion.[2]

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[1] "Tr." references are to the transcript of proceedings before the Tax Court. These portions of the transcript were not reproduced by petitioner in the record appendix which he prepared for use in the court of appeals.

[2] These factors were not, as petitioner asserts (Pet. 7-12), given controlling weight by the Tax Court. As noted by the court of appeals (Pet. App. 6), "these factors constituted evidence of the practical construction which the parties themselves placed upon the instrument in question," and "served only as collateral indicia of the actual intent of the parties." See *Shadden* v. *Zimmerlee*, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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